

NOTICE TO THE BAR

GUARDIANSHIP -- BACKGROUND SCREENING FOR PROPOSED GUARDIANS OF INCAPACITATED ADULTS – PROPOSED AMENDMENTS TO RULE 4:86-2(b)(3) – COMMENTS REQUESTED

The Supreme Court invites written comments on the attached proposed amendments to Rule 4:86-2(b)(3) (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”). The amendments would provide that parents and spouses who are proposed as guardians, who under the rule are otherwise exempt from the background screening measures, must file an affidavit or certification setting forth their criminal and civil judgment history. The amendments would conform the rule to present practice.

[Directive #11-21](#) (“Guardianships of Incapacitated Adults – Background Screening Policy for Proposed Guardians; New and Revised Court Forms”) promulgated a new background screening policy for proposed guardians of incapacitated adults. To implement the policy, the Court in early 2021 amended several provisions of Rule 4:86 (“Action for Guardianship of an Incapacitated Person or for the Appointment of a Conservator”), including Rule 4:86-2.

Pursuant to the policy and the related rule amendments, proposed guardians now are required to file of an affidavit or certification setting forth their criminal and civil judgment history. The background screening process also involves fingerprinting, criminal background checks, civil judgment reports, and a review of records in Judiciary systems. The rule and directive further provide that certain categories of proposed guardians -- including the parent(s) and spouse/partner of the alleged incapacitated person -- are exempt from background screening requirements, unless specifically ordered by the court.

The proposed rule amendment would clarify that an alleged incapacitated person’s parent(s) or spouse/partner must file an affidavit or certification of criminal and civil judgment history before appointment as guardian. The requirement to file a certification or affidavit is intended to balance the court’s interest in identifying an individual’s negative history that may adversely affect that individual’s ability to serve in the best interests of the incapacitated person against the burden of imposing the other, more

intrusive, requirements of the background screening policy on those in close caregiving relationships.

Please send any comments to the attached proposed rule amendments in writing by **Friday, April 15, 2022** to:

Glenn A. Grant
Administrative Director of the Courts
Proposal to Amend Rule 4:86-2(b)(3)
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Comments may also be submitted via email at the following address:
Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address, and those submitting comments by email should include their name and email address. Comments are subject to disclosure upon receipt.



Glenn A. Grant
Administrative Directors of the Courts

Dated: March 2, 2022

4:86-2. Complaint; Accompanying Documents; Alternative Affidavits or Certifications

(a) ...no change.

(b) Accompanying Documents. The complaint shall have annexed thereto:

(1) ...no change.

(2) ...no change.

(3) An affidavit or certification setting forth the criminal and civil judgment history of each proposed guardian, in such form as promulgated by the Administrative Director of the Courts. The affidavit or certification may be supplemented at any time up to the time of qualification and acceptance of appointment. If no proposed guardian has been identified at the time of the filing of the complaint, the affidavit or certification shall be filed no later than prior to the entry of the judgment of legal incapacity and appointment of guardian.

The court will consider the relevant history as provided in the affidavit or certification and through any background screening policy for proposed guardians of incapacitated adults promulgated by the Administrative Director of the Courts, including but not limited to fingerprinting.

[Except as specifically ordered by the court pursuant to subparagraph (H),

t] The following shall be exempt from this requirement:

(A) individuals who are the parents in a parent and child relationship with an alleged incapacitated person, as “parent and child relationship” is defined by the New Jersey Parentage Act, *N.J.S.A. 9:17-39*;

(B) individuals who are married to an alleged incapacitated person in accordance with *N.J.S.A. 37:1-29 et seq.*, in a civil union with an alleged incapacitated person as defined by *N.J.S.A. 37:1-29*, or in a domestic partnership with an alleged incapacitated person as defined by *N.J.S.A. 26:8A-3*;

(C) pendente lite temporary guardians appointed pursuant to *N.J.S.A. 3B:12-24.1(c)*;

(D) agencies authorized to act pursuant to P.L.1985, c. 298 (*C.52:27G-20 et seq.*), P.L.1985, c. 145 (*C.30:6D-23 et seq.*), P.L.1965, c. 59 (*C.30:4-165.1 et seq.*) and P.L.1970, c. 289 (*C.30:4-165.7 et seq.*);

(E) public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7;

(F) banks, trust companies, credit unions, savings and loan associations, or other financial institutions duly licensed or authorized to conduct business under applicable state or federal laws; and

(G) attorneys admitted to practice law and in good standing in the State of New Jersey; and

(H) notwithstanding subparagraphs (A) through (G)[, the]

(i) Any proposed guardian exempt from background screening pursuant to subparagraph (A) or (B) shall file an affidavit or certification setting forth the proposed guardian's criminal and civil judgment history; and

(ii) The court may require any proposed guardian to file an affidavit or certification setting forth the proposed guardian's criminal and civil judgment history or to undergo background screening as a prerequisite to appointment based on the individual facts of the case, including but not limited to the value of the guardianship estate; and

(4) A Case Information Statement in such form as promulgated by the Administrative Director of the Courts. Said Case Information Statement shall include the date of birth and Social Security number of the alleged incapacitated person.

(c) ...no change.

Note: Source — *R.R.* 4:102-2; former *R.* 4:83-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 9, 2008 to be effective September 1, 2008; caption amended, and paragraphs (a), (b) and (c) amended and captions added August 1, 2016 to be effective September 1, 2016; new subparagraph (b)(3) added and former subparagraph (b)(3) redesignated as (b)(4) March 15, 2021 to be effective May 15, 2021; paragraphs (b)(3) revised and (b)(3)(H)(i) and (ii) added
to be effective _____.